Supreme Court, U.S.
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No. .....

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

SAMIR TAHA,

Petitioner,

vs.

PORTLAND TAXI CAB CO., ROBERT ELLIOTT, and RANDY OWENS

Respondents.

Petition for Writ of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether federal judges can usurp absolute judicial power and suspend civil liberties so as to deprive petitioner, who is an Arab from Palestine, his fundamental constitutional rights to due process, as if a state of emergency exists and/or a martial law has been declared against Arabs living in this country.

The records in this viable litigation as well as in other previous cases filed by petitioner over the last twelve years in district court prove without a doubt that federal judges were unduly influenced against petitioner when they made flagrant and secret decisions in order to make it impossible for petitioner to obtain equal justice in this country, now and in the future. Records will show that the prejudicial treatment petitioner received from federal judges over the last twelve years was politically motivated and intended to legalize discrimination against Arab Americans due to the political upheaval against them in this country.

2. Whether federal judges can bar petitioner from representing himself in a viable litigation not because he lacks the ability to prosecute civil claims, but because petitioner is highly capable of litigating civil rights cases in orderly fashion.

Over the last twelve years, federal judges have been acting in a systematic and cynical manner to prevent petitioner from exercising his legal rights to proceed as pro se litigant despite the critical issues of increasing racial and political prejudice against Arabs living in this country. Because petitioner appeared pro se, judges made their decisions on the "written

submissions," refused to see or hear him, suppressed his cases, charged legal fees without giving petitioner any opportunity to litigate viable claims, and discredited the legal work done by petitioner, all in an effort to prejudice his claims and deny him the very essence of due process of law. This adopted policy by District Court in Portland, Oregon has been in effect since 1986 and encouraged discrimination against petitioner to continue as illuminated in this case.

3. Whether the Ninth Circuit fundamentally altered the requirements of burden of proof in holding secretly and arbitrarily that petitioner failed to make out a prima facie case of racial discrimination because (a) the affidavit of key defendant, who died during this litigation, was admitted as evidence on the basis of hearsay and lies, and (b) The Ninth circuit decided to take "his word" to dismantle petitioner's case in its entirety despite the existence of other claims in conjunction with the issue of racial animus manifested by respondents against petitioner such as calling him "lousy foreigner," or the issue of illegally confiscating petitioner's business interest with the company without just compensation, yet, intentionally damaging petitioner's reputation on absolutely false grounds.

PARTIES

All parties to this proceeding are listed in the caption.

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To The United States Court of Appeal
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Samir Taha, petitioner herein, prays that a Writ of Certiorari issue to review the unconstitutional ruling of the Court of Appeals for the Ninth Circuit entered November 7, 1997.

OPINIONS BELOW

The non-opinion ruling of the Ninth Circuit called "Memorandum" and is reprinted as Appendix A at p. A1. The ruling was designated not for publication. The District Court's Opinion and Order at issue in this

appeal is reprinted as Appendix B.

JURISDICTION

The Ninth Circuit rendered its ruling in this case on November 7, 1997. Appendix A, 1-3. "Memorandum." No petition for rehearing was timely filed in this case. This is the judgment sought for review. This Court has jurisdiction to review the judgment of the United States Court of Appeal for the Ninth Circuit by Writ of Certiorari pursuant to 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article VI of the U.S. Constitution
Article VII of the U.S. Constitution
The Fifht, Seventh and Fourteenth Amendments
42 U.S.C. 1981 provides in relevant part: "All persons...shall have the same right in every state...to make and enforce contracts, to sue..."
42 U.S.C. 1985(3) provides in relevant part:" If two or more persons...act in furtherance of the object of a conspiracy..." will be held liable for their acts.

STATEMENT OF THE CASE

NATURE OF CASE

Petitioner, who is a United States citizen born in Palestine, filed this action in the United States District Court for Oregon on March 20, 1996, seeking injunctive relief and legal remedies under 42 U.S.C. 1981 and 42 U.S.C. 1985(3). Petitioner requested a jury trial. The Complaint asserted, that, by terminating petitioner's lease agreement on false grounds and without offering petitioner just compensation for his investment, respondents maliciously intended to harm petitioner and defame

his good name based on racial animus towards the Arab race. As a result, petitioner sought immediate injunctive relief, but Judge Ancer Haggerty acted in a matter of days and denied the injunction without any hearing. This kind of an open and shut case ruling continued by the judge throughout the entire year until he decided to grant summary judgment for respondent without any hearing and despite the existence of genuine issues that were supported by substantial evidence. Petitioner then appealed the case to the Ninth Circuit in apt time. That court refused to hear the appeal or uphold petitioner's constitutional rights, making racism against the Arab race the law of the land simply by a stroke of a pen.

FACTUAL BACKGROUND

The Appalling-unconstitutional treatment petitioner received on the hands of federal judges and appellate court has been in effect since April 15, 1986. In every viable litigation brought by petitioner over the last twelve years, ,judges reflected deep-seated antagonism towards petitioner and saw a picture of him based on what the government and the media in this country perceive Arabs: people who commit acts of terrorism. Judges ruled about who is the person in litigation rather than on the critical issues involved in litigation. In this case, as an example, judges put the victim on trial, tried him on papers in their chambers, acted as the judge and the jury, and rendered suppressive and secret decisions in reckless disregard to the federally protected rights of the aggrieved. The following is a summary of the judges' prejudicial decisions over the last twelve years against petitioner:

1. On April 15, 1986, petitioner brought a very serious case against Portland State University concerning the violations of petitioner's rights to education. Petitioner, who was top student at the university, was targeted for political reasons because he was an Arab from Palestine and highly successful pursuing a promising academic career. **Case No. 86-452-FR**. In less than two months, Judge Helen Frye acted very quickly and dismissed the case with prejudice and without leave to amend without hearing the parties in the action. That flagrant ruling served and continue to serve as a precedent or as a court policy in which all other judges in the district relied upon to dismiss subsequent actions filed by petitioner as in this case.

2. In 1991, petitioner brought another serious action against the Immigration and Naturalization Service in the same court regarding the illegal discrimination over petitioner's application for naturalization. **Case No. 91-973-PA.** Few months later, Judge Owen panner dismissed the action without any evidentiary hearing on the ground that the claims of becoming an American citizen and petitioner's good name were frivolous. As a result of the dismissal, the INS sought reprisals and moved to deport petitioner even while he is legal resident. Petitioner fought back and defeated such politically motivated attempt against him. After eight years of tense standoff with the INS, petitioner became an American citizen as of 1994.

3. On March 20, 1996, petitioner brought this action, the subject of this appeal, for deprivation of essential property and liberty interest seeking equitable and legal relief. Judge Ancer haggerty automatically treated the action as an open and shut case and refused to uphold petitioner's constitutional rights or protect him from the continuing violations which have

persisted against petitioner for long years. After holding the case for a year, Judge Ancer haggerty dismissed the action in a very suppressive, unethical and illegal manner in one of the most brutal punishment ever taken against the aggrieved. Petitioner will rely on these appalling treatments by the courts to ask the U.S. Supreme Court to review this case on constitutional grounds.

ARGUMENT

Petitioner has successfully brought a prima facie case against respondents by meeting the elements of prima facie cases adopted under McDonnel Douglas framework. Petitioner can prove that (1) he is in the race groups protected under Title VII of the Civil Rights Act and is considered an oppressed minority; (2) petitioner was discharged and lost a business interest; (3) at the time of discharge, petitioner was conducting his business in compliance of agreements and rules, (4) following the termination of petitioner's contractual agreement, he was replaced by someone of lesser qualifications outside the protected class. *McDonnel Douglas Corp. v. Green,* 411 U.S. 792 (1973). See also *Teamsters v. U.S.,* 431 U.S. 324, 358 (1977). *Douglas v. Anderson,* 656 F.2d 528, 531-532 (9th Cir.1981).

The District Court and the Ninth Circuit have arbitrarily rejected petitioner's prima facie case by admitting inadmissible evidence based on the affidavit of respondent Robert Elliott, who died during this litigation. Such affidavit contained false allegations and it was based on hearsay evidence never was admitted by courts. The court also disregarded the fact that respondent Elliott was no longer a witness in the case because of his death. Because the ruling of the

courts was secret and suppressive, every accusation made against petitioner was admitted in order to dismantle petitioner's case and deny him due process rights and the equal protection of law.

The ultimate inquiry by this court is whether the unwarranted rejection petitioner received from the judges was actually motivated against the Arab race since petitioner never was given a hearing or any opportunity to present his case to refute the allegations of respondents. When petitioner was called by respondents a "jerk'" and a "lousy foreigner" in a public place and there was an affidavit of a witness to support that claim, summary judgment should not be granted since motive is an issue. *See, Poller v. CBS,* 368 U.S. 464, 473, 7 L.Ed. 2d 458, 464, 82 S.Ct. 486 (1962). The judges also did not address the issue of the investment made by petitioner in the company. That intentional disregard to that issue was subtle enough aimed at denying petitioner any claim for a hearing or trial. Even the damage to petitioner's good name, the judges in the Ninth Circuit let it stand as if the victims' lives and their livelihood mean nothing to them.

Because petitioner was discriminated against in the past by Portland State University and the Immigration and Naturalization Service, judges should have given favorable consideration to his claims. *Patterson v. McLean Credit Union*, 491 U.S. 164, 105, LEd. 2d 132, 109 S.Ct. 2363 (1989). Moreover, while Courts including the Ninth Circuit accept the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff (petitioner), judges in the circuit violated their own ruling, because of bias against Arabs, to do just the opposite merely to prejudice petitioner claims at any cost. *See Durning v. First Boston Corp.* 815 F.2d 1265, 1267 (9th Cir. 1987).

Another major discrepancies by the Ninth Circuit was to allow summary judgment against petitioner to stand without hearing any party in the action. *In Fernhoff v. Tahoe Agency*, 803 F2d 979 (9th Cir. 1986), the court required lower courts to grant a hearing on a summary judgment motions, especially, to the opposing party. The Ninth Circuit also emphasized the Seventh Amendment rights in which a jury, as in this case, should be the trier of the facts not the judge. *See Etalook v. Exxon Co.*, 831, F.2d 1440 (9th Cir. 1987).

In sum, both District Court and the Ninth Circuit decided to usurp absolute judicial power and put respondents above the law because the victim is an Arab. This is because judges in these courts who ruled under the cover of secrecy assumed till now that a review to this case by the U.S. Supreme Court is unlikely.

Over the last twelve years, petitioner paid legal fees to the courts and did extensive research to present his claims and received nothing from the court but harm and humiliation.

Petitioner is so confident that this court will overturn these unconstitutional and inhuman decisions which made against the aggrieved in total disregard to the rule of law.

REASONS FOR GRANTING THE WRIT

THE COURTS HAVE SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS

Since April 15, 1986, petitioner has found himself fighting the prejudice of judges and the courts rather

being given the opportunity to fight racism against Arab Americans in courts. The ultimate inquiry by this court is to ask why federal judges in lower courts were secretly allowed to usurp absolute judicial power so they can pick and choose who to protect at their own will. Every year, we commemorate the great civil rights leader Martin Luther King who saw a dream of racial equity in this country and realized that injustice anywhere is injustice everywhere. Petitioner, who is from Palestine, never realized his dream of living in the homeland because of the horrible injustice inflicted upon his people in occupied Palestine. That terrible injustice followed petitioner in this country and it was allowed to continue by the government and the courts alike as if petitioner has neither constitutional rights nor human rights; as if a state of emergency exists against Arabs living in this country or a marshal law been declared because of fear of the so called Arab terrorism. Otherwise, why petitioner's constitutional rights to due process and the equal protection had to be suspended for the last twelve years? Such substantial constitutional questions of law and the unprecedented animosity shown by federal judges against petitioner warrant without a doubt a review by the United States Supreme Court in order to exercise its supervisory power over judges who decimated our constitutional system of law for either political or personal gains.

It is unequivocal that such reckless disregard to petitioner's constitutional rights by judges who ruled always in absentia against the victim represents a great breach to a public trust and put the democracy in this country and its principles for freedom and justice for all back to the dark ages where only the rule of individual has become the law of the land. Article VI of the U.S. Constitution states: "This Constitution and the laws of the United States *** shall be the supreme law

of the land and the judges in every state shall be bound thereby." (Emphasis added).

Over the last twelve years, federal judges refused to treat petitioner legally and equally, making them in serious conflict with the ruling of this court in which judges required to treat all citizens of this country, as a matter of duty, on equal basis. *Gulfstream Corp. vs. Mayacamas,* 485 U.S. 271, 289, 108 S.Ct. 1133 LED 296(1988). See also *Reynaga v. Cammisa*, 971 F.2d 414 (9th Cir. 1992). It is very clear that judges in the Ninth Circuit have departed from their own opinions regarding this case. The ruling also departs from the basic principles of our legal system and the procedures set in the Bill of Rights. What is better description of this departure than what the great Justice Douglas who wrote how equal justice can be achieved in this country by emphasizing a steadfast adherence to strict procedural safeguards which he described as procedures that spell much of the difference between rule by law and rule by whim or caprice. *Joint Anti-fascist Refugee Committee v. MacGrath,* 341 U.S. 123, 179, 71 S. Ct. 624, 95, LED. 817 (1951). It is quite obvious that the judges' fascist decision of the Ninth Circuit recklessly violates basic principles of justice, extremely departs from the letter and the spirit of our constitution and it is an affront to the landmark ruling of Justice Douglas thirty seven years ago. Such rule of the individuals must not be allowed to stand because it is not only a travesty of justice to the victims, but also it is a decimation to the Fifth, Seventh, and Fourteenth Amendments Clauses and to the Bill of Rights. Therefore, this court must act to restore the victims' trust back in the legal system. Now before this court arises a simple question: Did the Jurisprudence System take its course in this case?

THE COURT HAS DECIDED AN IMPORTANT QUESTION THAT CONFLICTS WITH THE RULING OF THIS COURT AND OTHER APPELLATE COURTS

There is no doubt that both district court and the Ninth Circuit denied petitioner his fundamental constitutional rights solely because he is an Arab and because he appeared as pro se litigant. All claims filed by petitioner over the last twelve years were significant to him, to Arab Americans and to the public at large. All cases were suppressed in a fascist fashion, making the existence of secret courts in America a reality.

As it has been explained before, federal judges refused to uphold the law and protect petitioner because he is an Arab. The question before this court is whether these judges have seriously violated this court ruling when it held that Arab Americans are protected under law. *Saint Francis College v. Alkhazraji,* 481 US, 95 LED 582, 107 S.Ct. (1987). Petitioner, however, does not have to cite any other ruling of appellate courts, including the Ninth Circuit in order to convince this court of a conflict; because petitioner never was treated legally or equally by any court which holds these courts in clear contempt of the law of the land as well as the ruling of the U.S. Supreme Court in the case cited above.

PETITIONER'S CASE IS A CASE OF PUBLIC AND A GREAT GENERAL INTEREST TO ALL ETHNIC GROUPS AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

The secret and suppressive decision of the Ninth Circuit entered in this critical case threatens all ethnic groups, namely Arab Americans. It secretly legalizes

that one can lose all of his/her rights in this land of the free based on race and/or political beliefs. It also expressly affirms that persecution of one's race in this land of the free, since this country is at fight with what it calls Arab terrorism, can be tolerated as long as it is kept secret from the public as it has been taking place against petitioner for a long time.

Petitioner, who was highly successful at Portland States University and acquired considerable knowledge in business and computer science was never allowed to function freely in this country. Petitioner ambitions to be part of the mainstream of America to help build this country based on racial harmony have been shattered by groups of Arab bashers and through a political plot that made the loss to him very small compared what this country lost had he been allowed to contribute to this country and the public's well-being. Petitioner did not come here to drive a taxi or for ill reasons, he came to succeed so the country and the people benefit from that success. That is why the enemies of the Arabs chose Portland State University to target him; it was a horrible crime against the mind. Even when petitioner was driving for a living, that interest was taken away from him in brutal manner while the judges in district court and the Ninth Circuit affirmed the confiscation of petitioner's property and liberty interest without any due process of law. Such ruling flagrantly violates the Fifth and Fourteenth Amendments to the Constitution which requires that: "no one shall be deprived of life, liberty or property without due process of law," while the Seventh Amendment requires " where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." In this case, any reasonable person can conclude that by inflicting brutal injustice even against one person constitutes a real threat to

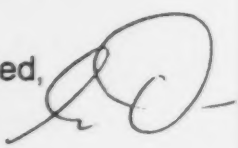
the public at large. And these appalling acts will continue absent checks and balances by this court.

Accordingly, petitioner expects this court to review this very serious case and decide the monumental questions raised in it.

CONCLUSION

For the forgoing reasons, and because petitioner has been robbed of justice by a legal system that has proved to be anti Arabs, petitioner submits that the Ninth Circuit has decided an important question of federal law concerning Arab Americans that has not been, but should be, settled by the United States Supreme Court. And since petitioner had bitter struggle with the court system for the last twelve years trying to uphold the law, the instant petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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Dated: February 3, 1998

APPENDIX A

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SAMIR TAHA,
Plaintiff-Appellant,

No. 97-35300
D.C. No. CV-96-00419-ALH

v.

MEMORANDUM*

PORTLAND TAXI CAB CO.;ROBERT ELLIOTT; RANDY OWENS,
Defendants-Appellees.

Appeal from the United States District Court
for the District of Oregon
Ancer L. Haggerty, District Judge, Presiding

Submitted November 4, 1977**

Before: HUG, Chief Judge, PREGERSON, and BREEZER, Circuit Judges.

Samir Taha, former taxi driver of Arab descent, appeals pro se the district court's summary judgment for Portland Taxi Cab Company and two of its officer ("Portland Taxi" in his race discrimination action alleging that the termination of his taxi permit sublease violated 42 U.S.C. 1981 and 1985(3). We have jurisdiction pursuant to 28. U.S.C. §1291, and we affirm.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** Because the panel unanimously finds this case suitable for decision without oral argument, see Fed. R. App. P. 34(a), 9th Cir. R. 34-4, Taha's request for oral argument is denied.

Taha contends that: (1) summary judgment for Portland Taxi was improper because he raised a genuine issue of material fact as to pretext, and (2) denial of his motion to disqualify the district court judge was an abuse of discretion. 1/ These contentions lack merit.

We review de novo the grant of summary judgment. See Bagdadiv. Nazar, 84 F.3d 1194, 1197 (9th Cir. 1996). We must determine whether there are any genuine issues of material fact and whether the district court properly applied the law. See id.

Under 42 U.S. C. 1981, a plaintiff must first establish a prima facie case of discrimination, then defendants must articulate a legitimate nondiscriminatory reason for the challenged action, and finally plaintiff must show that the proffered reason is merely a pretext for discrimination. See Wallis v. J.R> Simplot Co., 26 F.3d 885, 889 (9th Cir. 1994). 2/

Here, Taha alleged that his taxi permit sublease contained unusually restrictive terms because he is an Arab, and that during an argument following the termination of his sublease, the vice-president of Portland Taxi called him a "lousy foreigner." In

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1/ We do not address Taha's contention that the district court abused its discretion by denying his motions for temporary restraining order and preliminary injunction because denial of these motions merged into the final judgment. See Associated Builders & Contractors v. Carpenters Vaction and Holiday Trust Fund, 700 F.2d 1269, 1274 (9th Cir. 1983). Moreover, we deny Taha's request for declaratory relief from this court because it is without basis.

2/ Section 1981 claims are analyzed according to the scheme of proof set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). See Patterson v. McLean Credit Union, 491 U.S. 164, 186 (1989).

turn, Portland Taxi presented evidence that Taha's sublease contained additional conditions because he had a record of complaints and traffic accidents, and that his sublease was terminated after one year because of further complaints from various sources, including Portland Airport Ground Transportation, a doorman at the Hilton Hotel, other taxicab drivers, Portland Taxi dispatchers, and Taha's customers.

Even if Taha stated a prima facie case of discrimination, he failed to raise a genuine issue of material fact as to pretext. See id. at 890. Accordingly, Portland Taxi was entitled to summary judgment on his 1981 claim. See Bagdadi, 84 F.3d at1197.

Because Taha failed to present any evidence of a conspiracy Portland taxi was also entitled to summary judgment on his § 1985(3) claim. See Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir. 1992).

Moreover, because Taha failed to present any evidence of bias, it was not abuse of discretion to deny his motion for disqualification. See United States v Hernandez, 109 F.3d 1450, 1453-54 (9th Cir. 1997). 3/

AFFIRMED.

3/ Taha claimed the district court judge was biased because he delayed ruling on motions and denied oral argument. See Liteky v. United States, 510 U.S. 540, 555 (1994) ("judicial rulings alone almost never constitute valid basis for a bias or partiality motion").

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APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SAMIR TAHA,

Plaintiff,

v.

PORTLAND TAXI CAB CO. ROBERT ELLIOTT; AND RANDY OWENS

Defendants

Civil No. 96-419-HA

OPINION AND ORDER

Samir Taha
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HAGGERTY, JUDGE;

On 20 March 1996, plaintiff filed this action asserting three claims: (1) that he was deprived of his right to contract because of his race in violation of 42 U.S.C 1981, (2) that he was defamed and lost his "rights to contract in violation of 42 U.S.C. 1985(3) and his due process rights; and (3) that he was deprived of his right to contract in equal basis in violation of the guarantees provided by the United States Constitution. After protracted discovery disputes and repeated motions for judicial recusal from plaintiff, defendants timely filed a motion seeking summary judgment on each plaintiff's claims (doc. # 79). This motion was fully briefed on 10 January 1997, and oral argument was not scheduled. For the following reasons, defendants' motion is granted, plaintiff's claims are dismissed, and this action is closed.

BACKGROUND

Plaintiff is a former taxi cab driver for defendant Portland Taxi Cab Company. During plaintiff's employment, the company possessed 26 city permits for the operation of taxi cabs in the city of Portland. The company leased seven of these permits to defendants Robert Elliott. Elliott previously sublet permit No. 20 to Tim Faulkner, who owned and operated a 1977 van as cab No. 20. In 1995 Faulkner terminated his lease and advised Elliott that plaintiff wanted to buy the van if Elliott would lease permit No. 20 to plaintiff. Elliott testified via affidavit that when he investigated plaintiff's employment history, he received unfavorable reports about plaintiff, and learned that plaintiff had been in two recent automobile accidents.

Becuase of his concerns, Elliott required plaintiff to agree to certain conditions before he could lease the permit. Plaintiff agreed to the special conditions, as well as the terms of the standard lease. These terms allowed either party to terminate the lease with or without cause on 30 days notice. Plaintiff and Elliott signed the leases on 27 April 1995, and plaintiff drove the taxi cab under permit No. 20 from April or May 1995 through March 1996.

Elliott testified that from May 1995 through February 1996, he received complaints "from the Ground Transportation Department of the Portland international Airport, the doorman at the Hilton Hotel, other taxi cab drivers, dispatchers employed by Portland Taxi and Mr. Taha's customer" regarding plaintiff's behavior. Elliott Affidavit at 4. By letter dated 29 February 1996, Elliott terminated plaintiff's lease effective 31 March 1996 in accordance with the terms of the parties' leases.

In response to the termination notice, plaintiff brought this action on 20 March 1996 and requested immediate injunctive relief. This court determined that, if appropriate, adequate compensatory or other corrective relief would be available in the ordinary course of litigation, and concluded that there was an insufficient showing to establish the degree of irreparable harm required before obtaining the extraordinary relief being sought. See Order issued 18 April 1996 (doc. #24). Now pending before this court is defendants' motion for summary judgment.

STANDARDS

Summary judgment is appropriate if the court finds that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). There is no genuine issue of material fact when the non-moving party fails "to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof at trial. " Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); Harper v. Wallingford, 877 F.2d 728, 731 (9th Cir. 1989).

All reasonable doubts as to the existence of genuine issues of fact must be resolved against the moving party. Hector v. Wiens, 533 F.2d 429, 432 (9th Cir. 1976). The inferences drawn from underlying facts must be viewed in the light most favorable to the party opposing the motion. Valandingham v. Bojorquez, 866 F.2d 1135, 1137 (9th Cir. 1989). Where different ultimate inferences can be drawn, summary judgment is inappropriate. Sankovich v. Life Ins. Co., 638 F.2d 136, 140 (9th Cir. 1981).

In responding to a motion for summary judgment, the non-moving party must set forth specific facts showing that there is a genuine issue for trial. Fed.R. Civ. P. 56(c). "If he does not so respond, summary judgment, if appropriate, shall be entered against him." Overby v. Chevron USA,Inc., 884 F.2d 470, 472 (9th Cir. 1989) (quoting 42 U.S.C. § 1981). The provisions of § 1981 reach purely private conduct. Patterson v. Mclean Credit Union, 492 U.S. 164, 171-72 (1989); General Building Contractors Assn. v. Pennseylvania, 458 U.S. 375, 387-88 (1982).

A 1981 plaintiff must make out a prima facie case of discrimination similar to that required under Title VII

42 U.S.C. § 2000(e) et seq. , Patterson, 491 U.S. at 186; Gay v. Waiters & Dairy Lunch Men's Union, 694 F.2d 531, 538-39 (9th Cir. 1982).

To state a prima facie case, a plaintiff must show that he was denied a benefit which he was entitled to receive under circumstances giving rise to an inference of intentional discrimination. see. e.g. , Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnel Douglas Corp. v Green, 411 U.S. 792, 802 (1973); Lindahl v. Air France, 930 F.2d 1434, 1437 (9th Cir. 1991).

A prima facie case may be established by presenting evidence that gives rise to an inference of unlawful discrimination. Wallis v. J.R. Simplot Co., 26 F.3d 885, 889 (9th Cir. 1994). Any indication of discriminatory motives may suffice as a basis of prima facie case. Schnidrig v. Columbia Machine Inc., 80 F.3d. 1406, 1409 (9th Cir. 1996).

Establishing a prima facie case raises an inference of discrimination that the employer may rebut by presenting evidence that it had a legitimate, non - discriminatory reason for its challenged decision. Merrick v. Farmers Insurance Group, 892 F.2d 1434, 1436 (9th Cir. 1990). To avoid summary judgment once the employer has presented such evidence, the plaintiff "must demonstrate a genuine issue of material fact as to pretext." Id. at 1437; Steckl v. Motorla Inc., 703 F 2d 392, 393 (9th Cir. 1983); see also Patterson, 491 U.S. at 186-87 (applying McDonnell/Burdine scheme of proof to § 1981 actions).

Pretext can be shown in two ways: either (1) directly by persuading the court that a discriminatory reason more likely motivated the employer or (2) indirectly by

showing that the employer's proffered explanation is unworthy of credence." Plaintiff must produce specific facts revealing a genuine factual issue for trial, and evidence significantly probative of material facts that are claimed to be disputed. Steckl, 703 F.2d at 393 Quoting Ruffin v. County of Los Angeles, 607 F.2d 1276, 1280 (9th Cir. 1979) cert. denied, 445 U.S. 951 (1980). Throughout this analysis, plaintiff bears the ultimate burden of proof. Burdine, 450 U.S. at 252-53; see also St. Mary's Honor Center. et al v. Hicks, 509 U.S. 502, 506 (1993).

Although not part of plaintiff's prima facie case, in order to prevail under 1981, plaintiff bears the ultimate burden of proving purposeful discrimination. Patterson, 491 U.S. 1t 186 (setting forth prima facie case under § 1981); see also General Building contractors Assn., 458 U.S. at 388 (requiring proof of intentional discrimination); West Coast theater Corp. v. city of Portland, 897 F.2d 1519, 1527 (9th Cir. 1990); Dohorney v. Bank of America Nat'l Trust & Savings, 879 F.2d 459 (9th cir. 1989); Jurado v. Eleve Fifty Corp., 813 F.2d 1406, 1412 (9th Cir. 1987).

ANALYSIS

Defendants seek summary judgment on each of plaintiff's claims, asserting that there is no evidence presented that prompts an inference of racial discrimination. Defendants lease to a number of Middle Eastern drivers, and the drivers represent a diverse background of ethnic and racial origins. Elliott Affidavit at 6; Declaration of Randy Owens at 2. Plaintiff alleges that he "was the only person who was badly treated at Portland Taxi. Plaintiff's Memorandum in Opposition at 8, (see also p. 3; plaintiff is "the only driver who has been subjected to the worst harassment...."). Plaintiff

asserts that he was discriminated against after defendants learned that he was of Arab ancestry, while the other Middle Eastern drivers are Persian, No evidence presented suggesting that defendants were aware at any time before this suit began that defendant's ancestry was unique or a potential basis for improper disparate treatment. Defendant's evidence that the officers at Portland Taxi Cab did not know that plaintiff's background was distinguishable from other Middle Eastern drivers, who plaintiff acknowledges were not discriminated against, is uncontroverted. Owens Declaration at 2.

Plaintiff asserts in response that "{e}vidence will be presented to show that the plaintiff has been exclusively singled out and denied the right to a just compensation," Plaintiff's Declaration in Opposition at 5 (emphasis added). Plaintiff fails to identify such evidence. In responding to a motion for summary judgment, the non - moving party must set forth specific facts showing that there is a genuine issue for trial. Fed.R. Civ.P. 56(c). Plaintiff has failed to do so.

This court, however, accepts plaintiff's allegation as true for the purposes of resolving this summary judgment motion. In light of plaintiff's termination, his racial background, and his contentions that he was called a "lousy foreigner" when an altercation arose while he was being terminated, that he was asked "where he was from" during a discussion about the permit sublease, and that he was asked if he was an "Arab or a Muslim," the court concludes that plaintiff has adequately (but barely) established a prima facie case of discrimination. Plaintiff has presented evidence that could give rise to an inference of unlawful discrimination Wallis26 F 3d. at 889

In response to this prima facie case, however, defendants have come forward with legitimate, non - discriminatory reasons for terminating plaintiff. In accordance with the terms of the lease plaintiff signed, defendants were entitled to terminate plaintiff, without cause, on 30 days' written notice. Plaintiff acknowledges this, and admits that he received such notice. Plaintiff's Memorandum in Opposition at 4 (plaintiff acknowledges that defendants had the choice to terminate plaintiff lease agreement without cause); Ex. A, p.11, to Declaration of Christopher B. Rounds (plaintiff's deposition wherein plaintiff acknowledges "contract which can be terminated within 30 days notice; "at p.13, plaintiff admits he received 30 days notice).

Defendants have also presented evidence regarding plaintiff's unsatisfactory performance, meeting their burden of producing legitimate, nondiscriminatory reasons for why they terminated plaintiff. Elliott testified that throughout plaintiff's association with defendants, complaint against plaintiff were filed from numerous sources (the Ground Transportation Department of the Portland international Airport, the doorman at the Hilton hotel, other taxi cab drivers, dispatchers employed by Portland Taxi and Mr. Taha's customers). Elliott Affidavit at 4. A copy of one of these complaints is provided as Exhibit C to the Elliott Affidavit, as is plaintiff's written response to the scheduling of a meeting with airport officials to discuss the incident. Ex. D to Elliott Affidavit. In this signed response, plaintiff stated that he would refuse to appear at the scheduled meeting, and that he was also refusing to work at the airport. Id. This posture is in direct contravention to the terms in plaintiff's lease. Ex. B to Elliott Affidavit.

Plaintiff asserts in response that "{c}onsidering the

evidence presented from both sides, this court will find that defendants relied heavily on hearsay evidence to terminate plaintiff. . . [and this hearsay evidence was} used as a pretext and in reckless disregard to the truth." Memorandum in Opposition at 2. Plaintiff contends that he "can easily prove to the court that defendants' articulated reasons for his termination {were} merely a pretext," because Elliott's affidavit is allegedly inadmissible as hearsay, none of the allegations contained in the affidavit "was proved to be true," and plaintiff never conducted a cross-examination to "disprove such allegation{s}." Id. at 6. Plaintiff also contends that the complaint attached as Ex. C to the Elliott Affidavit was later proved by plaintiff to be "false and groundless." Id. There is no evidence offered suggesting that defendants had any reason to doubt the veracity of the complaint in question, or any evidence whatsoever suggesting that defendants' reliance upon that complaint and others like it could be considered pretextual.

In challenging defendants' nondiscriminatory basis for his termination, plaintiff has done nothing more than to restate his original allegations, and to refer to evidence that he will present. To avoid summary judgment once the employer has presented legitimate, nondiscriminatory reasons for its challenged decision, the plaintiff "must demonstrate a genuine issue of material fact as to pretext." Merrick, 892 F.2d at 1436. "The plaintiff cannot carry this burden simply by restating the prima facie case and expressing an intent to challenge the credibility of the witnesses on cross-examination." Lindahl, 930 F.2d at 1437-38.

Plaintiff also introduces evidence that, over the last few years, other drivers at Portland Taxi Cab Company have received complaints. Ex. A, Plaintiff's Declaration in

Opposition. Although this evidence suggests that defendants regard complaints about their drivers to be very serious, and are to be addressed promptly, the evidence does not advance plaintiff's position that he was treated unfairly or that defendants' nondiscriminatory grounds for terminating plaintiff were pretextual.

Plaintiff has failed to meet his burden of establishing that defendants' legitimate reasons for terminating him were pretextual, and defendants are entitled to summary judgment. Moreover, plaintiff does not meet his ultimate burden of proving purposeful discrimination. General Building Contractors Assn., 458 U.S. at 388 (requiring proof of intentional discrimination). Plaintiff must show evidence of intentional, invidious discrimination. West Coast Theater Corp., 897 F.2d at 1527. Plaintiff's unsupported allegations that he was "constantly harassed" and that the complaints against him were "groundless" fail to raise a genuine question of material fact regarding whether the standards of 42 U.S.C. § 1981 have been met.

Plaintiff second claim is grounded upon 42 u.S.C. 1985 (3). Such a claim requires proof of a conspiracy to violate federal law.

In Trerice v. Pedersen, 769 F.2d 1398, 1402 (9th Cir. 1985), a case relied upon by plaintiff, the Ninth Circuit recognized that a claim arising under 42 U.S.C. 1985 (3) must contain a sufficient allegation that the defendant's conduct was motivated by a racial, class-based, invidiously discriminatory animus. Plaintiff asserts that "defendants conspired to put the plaintiff out of business, defame his good name and confiscate his business interest with Portland taxi without just compensation as all drivers do,: and "showed callous indifference to economic

losses and to losses to his esteem and honor in the community." Plaintiff's Memorandum in Opposition at 7. These unsupported contentions regarding an alleged personal animus on the parts of defendants against plaintiff offer no facts supporting the claim that a conspiracy motivated by a class-based animus existed. Failure to allege facts that support the existence of a conspiracy (beyond the bare assertion that there was a conspiracy) compels dismissal of the claim. See West Coast Theater Corp., 897 F.2d at 1527. Defendants are granted summary judgment on plaintiff's second claim.

Plaintiff's third and final claim for relief is based upon alleged deprivation of a "right to enter into contracts on {an} equal basis, guaranteed by the laws and Constitution of the United States of America." Plaintiff argues that because defendants are barring him from doing business with them, "one can infer that a continuing conspiracy exists in violation of applicable laws and the letter and spirit of the U.S. Constitution." Plaintiff Memorandum in Opposition at 8.

No legally cognizant "violation" can be inferred from defendants' refusal to do business with plaintiff. Plaintiff fails to identify the laws or constitutional guarantees allegedly violated, of their possible application to defendants as private parties. The absence of any genuine question of material fact regarding the allegations plaintiff asserts in his third claim compels the court to grant defendants' motion for summary judgment on this claim. Alternatively, the claim could be dismissed on grounds that plaintiff has failed to adequately state a claim upon which relief could be granted.

CONCLUSION

This court has carefully considered and weighed the evidence presented by the parties regarding the federal claims asserted by plaintiff. For the foregoing reasons, defendants' motion for summary judgment (doc. # 79) is granted. plaintiff's claims are dismissed with prejudice, and any other pending motions are denied as moot. Plaintiff's request for attorney fees is denied. This case is closed.

IT IS SO ORDERED.

DATED this 27 day of February, 1997.

/s/_____
Ancer L. Haggerty
United States District Judge